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3 **UNITED STATES DISTRICT COURT**
4 **NORTHERN DISTRICT OF CALIFORNIA**
5

6 **UNITED STATES OF AMERICA,**

7 Plaintiff,

8 vs.

9 **KEITH HOPKINS,**

10 Defendant.
11

CASE NO. 15-cr-00545-YGR-1

**ORDER RE: MOTION FOR EXTENSION OF
TIME AND MOTION TO REMOVE ORDER
FROM DOCKET**

Re: Dkt. Nos. 83, 85

12 The Court has received defendant's motion for extension of time (Dkt. No. 83) and motion
13 to remove an order from the docket (Dkt. No. 85). As defendant has not yet filed his motion
14 pursuant to Section 2255, it is unclear whether the Court has jurisdiction over defendant's motion
15 for an extension of time to so file. There is a split among the Circuit Courts of Appeal over
16 whether district courts have jurisdiction to consider a defendant's application for an extension to
17 file a 28 U.S.C. §2255 motion to vacate. *Compare United States v. Thomas*, 713 F.3d 165 (3d Cir.
18 2013) (holding that a district court does have such jurisdiction); *with United States v. Leon*, 203
19 F.3d 162, 163 (2d Cir. 2000) (per curiam) (holding that a district court may not rule on a motion
20 for an extension of time to file a Section 2255 motion because no case or controversy exists until a
21 formal request for Section 2255 relief has been made). The Ninth Circuit has not yet addressed
22 the issue. Thus, the Court **DENIES** defendant's motion for an extension of time. Defendant should
23 file his motion for Section 2255 relief as quickly as possible, at which point the Court will review
24 the timeliness of the motion and address any reasons for tolling of the one-year statute of
25 limitations.

26 Additionally, the Court **GRANTS** defendant's motion to remove from public viewing on the
27 docket the Ninth Circuit's July 12, 2017 memorandum in Case No. 16-10420. The Court instructs
28 the clerk to lock Docket Numbers 49 and 85.

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This Order terminates Docket Numbers 83 and 85.

IT IS SO ORDERED.

Dated: April 5, 2019


YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE